

can find any countenance for this proposition that paramount allegiance is due to the Federal Government. I go further, and call to your minds the jealousy that existed within the States with regard to delegating many of the powers that were proposed to be delegated to the Constitution of the United States. Look through the debates from the beginning to the end, and see what difficulty the framers of that Constitution would have had to encounter in getting it adopted, if such a proposition had been incorporated in it. Is there a man who believes that there is a solitary State which would have adopted it with such a provision in it? Not one, judging from the debates which were cotemporaneous with the Constitution.

Is it possible in the nature of things, looking at the powers of the Government of the United States, and looking at the powers of the government of the several States, that any such idea can be entertained? Where is the mass of the powers of government delegated by the people to their agents? Is it in the Federal Government? The powers of the Federal Government are few and specific, and mainly external, relating to our intercourse with foreign nations. Look at the mass of powers delegated by the people to their State governments.

The idea, as laid down in that authority, in Dallas, is that allegiance is due, and is connected with the idea of ownership and jurisdiction over land. If this right of eminent domain is to be the criterion of allegiance, where does it exist? Has the Federal Government, from the time of its foundation down to the time of these unfortunate difficulties that are now upon us, ever claimed the right of going into a solitary State of the confederacy, to appropriate one foot of land for any purpose whatever by an act of Congress without the assent of that State previously had and obtained? Was any such right delegated to the Federal Government? That is a test to show what was the idea of the framers of the Constitution. If this government is paramount, if the citizen owes paramount allegiance to it, then it has paramount jurisdiction over the soil on which he lives. Is any such idea contained in the Constitution of the United States? It was known that the Federal Government must have dock-yards, navy-yards, forts, lighthouses, to carry out its powers of regulating commerce. This was known, contemplated, and provided for. But was that Government vested with authority to go where it pleased, and appropriate land for a dock-yard, or to build a fort, or a lighthouse, or any other needful building, without the assent of the States? By no manner of means. The Constitution did not leave the subject in doubt; but among the enumerated powers of Congress is this:

"To exercise exclusive legislation, in all cases whatsoever, over such district (not ex-

ceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

The Constitution not only gives authority to purchase with the consent of the States, but they specially hedge it round that they shall not *purchase* within their limits and become the holder of enough land to build a lighthouse, or a dock-yard, or even a fort for the protection of the country, without the assent of the State Legislature first had and obtained.

This doctrine is fully recognized in the case before the Supreme Court of the United States involving the grant of land in Alabama. 3 Howard, 212. The Supreme Court expressly say that Alabama, over all her rivers, and bays and harbors, and over every foot of soil within her boundaries, had eminent domain which was supreme; and the Federal Government could not grant one foot of it, or enter upon it for any purpose, without the assent of the State Legislature first had and obtained; that although not one of the original thirteen, but formed out of the public lands, yet when admitted she was admitted with equal rights with the old thirteen States, and had the right of saying how far the Federal Government should enter upon their territory; and therefore within her territory not a foot of land could be occupied without her consent.

They go further and say that not only has the Federal Government no such municipal jurisdiction, but has not the constitutional capacity to exercise it, except in the cases where it is expressly granted. It has not the right of eminent domain anywhere. Even the public lands are held in trust, for the purpose of forming new States out of them. It has no right to appropriate them except in the way the trust requires, for the purpose of settlement to form new States to be admitted upon an equality with the old States.

The right of eminent domain, upon which depends the right to appropriate to public purposes all the property within the State, belongs to the State, and not to the United States. The Government of the United States has the right of taxation, which the Constitution prescribes, and which is concurrent with the State governments. But it has no right of eminent domain, no right to appropriate private property to the public use in any mode except by taxation. The State may do it, because the State power is paramount. The State may do it, because the State is sovereign, and has never stripped herself of the power which belongs to her as a sovereign State.